

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1189

Introduced by Assembly Member Nazarian

February 22, 2013

An act to amend Sections 17053.85 and 23685 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1189, as amended, Nazarian. Income taxes: credits: qualified motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000, through the 2016–17 fiscal year.

This bill, under the Personal Income Tax Law and the Corporation Tax Law, would extend the requirement to allocate the tax credits 5 additional years, until July 1, 2022. This bill would also extend and increase the limit on the aggregate amount of credits that may be allocated through the 2021–22 fiscal year.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law and Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided.~~

~~This bill would state the intent of the Legislature to enact legislation related to the tax credits for qualified motion pictures.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17053.85 of the Revenue and Taxation*
2 *Code is amended to read:*

3 17053.85. (a) (1) For taxable years beginning on or after
4 January 1, 2011, there shall be allowed to a qualified taxpayer a
5 credit against the “net tax,” as defined in Section 17039, in an
6 amount equal to the applicable percentage, as specified in
7 paragraph (4), of the qualified expenditures for the production of
8 a qualified motion picture in California.

9 (2) The credit shall be allowed for the taxable year in which the
10 California Film Commission issues the credit certificate pursuant
11 to subdivision (g) for the qualified motion picture, and shall be for
12 the applicable percentage of all qualified expenditures paid or
13 incurred by the qualified taxpayer in all taxable years for that
14 qualified motion picture.

15 (3) The amount of the credit allowed to a qualified taxpayer
16 shall be limited to the amount specified in the credit certificate
17 issued to the qualified taxpayer by the California Film Commission
18 pursuant to subdivision (g).

19 (4) For purposes of paragraphs (1) and (2), the applicable
20 percentage shall be:

21 (A) Twenty percent of the qualified expenditures attributable
22 to the production of a qualified motion picture in California.

23 (B) Twenty-five percent of the qualified expenditures
24 attributable to the production of a qualified motion picture in

1 California where the qualified motion picture is a television series
2 that relocated to California or an independent film.

3 (b) For purposes of this section:

4 (1) “Ancillary product” means any article for sale to the public
5 that contains a portion of, or any element of, the qualified motion
6 picture.

7 (2) “Budget” means an estimate of all expenses paid or incurred
8 during the production period of a qualified motion picture. It shall
9 be the same budget used by the qualified taxpayer and production
10 company for all qualified motion picture purposes.

11 (3) “Clip use” means a use of any portion of a motion picture,
12 other than the qualified motion picture, used in the qualified motion
13 picture.

14 (4) “Credit certificate” means the certificate issued by the
15 California Film Commission pursuant to subparagraph (C) of
16 paragraph (2) of subdivision (g).

17 (5) (A) “Employee fringe benefits” means the amount allowable
18 as a deduction under this part to the qualified taxpayer involved
19 in the production of the qualified motion picture, exclusive of any
20 amounts contributed by employees, for any year during the
21 production period with respect to any of the following:

22 (i) Employer contributions under any pension, profit-sharing,
23 annuity, or similar plan.

24 (ii) Employer-provided coverage under any accident or health
25 plan for employees.

26 (iii) The employer’s cost of life or disability insurance provided
27 to employees.

28 (B) Any amount treated as wages under clause (i) of
29 subparagraph (A) of paragraph (18) shall not be taken into account
30 under this paragraph.

31 (6) “Independent film” means a motion picture with a minimum
32 budget of one million dollars (\$1,000,000) and a maximum budget
33 of ten million dollars (\$10,000,000) that is produced by a company
34 that is not publicly traded and publicly traded companies do not
35 own, directly or indirectly, more than 25 percent of the producing
36 company.

37 (7) “Licensing” means any grant of rights to distribute the
38 qualified motion picture, in whole or in part.

39 (8) “New use” means any use of a motion picture in a medium
40 other than the medium for which it was initially created.

(9) (A) “Postproduction” means the final activities in a qualified motion picture’s production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, soundmixing, film-to-tape transfers, encoding, and color correction.

(B) “Postproduction” does not include the manufacture or shipping of release prints.

(10) “Preproduction” means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.

(11) “Principal photography” means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.

(12) “Production period” means the period beginning with preproduction and ending upon completion of postproduction.

(13) “Qualified entity” means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.

(14) (A) “Qualified individual” means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.

(B) “Qualified individual” shall not include either of the following:

(i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

(ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.

(15) (A) “Qualified motion picture” means a motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:

(i) A feature with a minimum production budget of one million dollars (\$1,000,000) and a maximum production budget of seventy-five million dollars (\$75,000,000).

1 (ii) A movie of the week or miniseries with a minimum
2 production budget of five hundred thousand dollars (\$500,000).

3 (iii) A new television series produced in California with a
4 minimum production budget of one million dollars (\$1,000,000)
5 licensed for original distribution on basic cable.

6 (iv) An independent film.

7 (v) A television series that relocated to California.

8 (B) To qualify as a “qualified motion picture,” all of the
9 following conditions shall be satisfied:

10 (i) At least 75 percent of the production days occur wholly in
11 California or 75 percent of the production budget is incurred for
12 payment for services performed within the state and the purchase
13 or rental of property used within the state.

14 (ii) Production of the qualified motion picture is completed
15 within 30 months from the date on which the qualified taxpayer’s
16 application is approved by the California Film Commission. For
17 purposes of this section, a qualified motion picture is “completed”
18 when the process of postproduction has been finished.

19 (iii) The copyright for the motion picture is registered with the
20 United States Copyright Office pursuant to Title 17 of the United
21 States Code.

22 (iv) Principal photography of the qualified motion picture
23 commences after the date on which the application is approved by
24 the California Film Commission, but no later than 180 days after
25 the date of that approval.

26 (C) For the purposes of subparagraph (A), in computing the
27 total wages paid or incurred for the production of a qualified
28 motion picture, all amounts paid or incurred by all persons or
29 entities that share in the costs of the qualified motion picture shall
30 be aggregated.

31 (D) “Qualified motion picture” shall not include commercial
32 advertising, music videos, a motion picture produced for private
33 noncommercial use, such as weddings, graduations, or as part of
34 an educational course and made by students, a news program,
35 current events or public events program, talk show, game show,
36 sporting event or activity, awards show, telethon or other
37 production that solicits funds, reality television program, clip-based
38 programming if more than 50 percent of the content is comprised
39 of licensed footage, documentaries, variety programs, daytime
40 dramas, strip shows, one-half hour (air time) episodic television

1 shows, or any production that falls within the recordkeeping
2 requirements of Section 2257 of Title 18 of the United States Code.

3 (16) “Qualified expenditures” means amounts paid or incurred
4 to purchase or lease tangible personal property used within this
5 state in the production of a qualified motion picture and payments,
6 including qualified wages, for services performed within this state
7 in the production of a qualified motion picture.

8 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
9 or incurred qualified expenditures and has been issued a credit
10 certificate by the California Film Commission pursuant to
11 subdivision (g).

12 (B) In the case of any pass-thru entity, the determination of
13 whether a taxpayer is a qualified taxpayer under this section shall
14 be made at the entity level and any credit under this section is not
15 allowed to the pass-thru entity, but shall be passed through to the
16 partners or shareholders in accordance with applicable provisions
17 of Part 10 (commencing with Section 17001) or Part 11
18 (commencing with Section 23001). For purposes of this paragraph,
19 “pass-thru entity” means any entity taxed as a partnership or “S”
20 corporation.

21 (18) (A) “Qualified wages” means all of the following:

22 (i) Any wages subject to withholding under Division 6
23 (commencing with Section 13000) of the Unemployment Insurance
24 Code that were paid or incurred by any taxpayer involved in the
25 production of a qualified motion picture with respect to a qualified
26 individual for services performed on the qualified motion picture
27 production within this state.

28 (ii) The portion of any employee fringe benefits paid or incurred
29 by any taxpayer involved in the production of the qualified motion
30 picture that are properly allocable to qualified wage amounts
31 described in clause (i).

32 (iii) Any payments made to a qualified entity for services
33 performed in this state by qualified individuals within the meaning
34 of paragraph (14).

35 (iv) Remuneration paid to an independent contractor who is a
36 qualified individual for services performed within this state by that
37 qualified individual.

38 (B) “Qualified wages” shall not include any of the following:

39 (i) Expenses, including wages, related to new use, reuse, clip
40 use, licensing, secondary markets, or residual compensation, or

1 the creation of any ancillary product, including, but not limited to,
2 a soundtrack album, toy, game, trailer, or teaser.

3 (ii) Expenses, including wages, paid or incurred with respect to
4 acquisition, development, turnaround, or any rights thereto.

5 (iii) Expenses, including wages, related to financing, overhead,
6 marketing, promotion, or distribution of a qualified motion picture.

7 (iv) Expenses, including wages, paid per person per qualified
8 motion picture for writers, directors, music directors, music
9 composers, music supervisors, producers, and performers, other
10 than background actors with no scripted lines.

11 (19) “Residual compensation” means supplemental
12 compensation paid at the time that a motion picture is exhibited
13 through new use, reuse, clip use, or in secondary markets, as
14 distinguished from payments made during production.

15 (20) “Reuse” means any use of a qualified motion picture in the
16 same medium for which it was created, following the initial use
17 in that medium.

18 (21) “Secondary markets” means media in which a qualified
19 motion picture is exhibited following the initial media in which it
20 is exhibited.

21 (22) “Television series that relocated to California” means a
22 television series, without regard to episode length or initial media
23 exhibition, that filmed all of its prior season or seasons outside of
24 California and for which the taxpayer certifies that the credit
25 provided pursuant to this section is the primary reason for
26 relocating to California.

27 (c) (1) Notwithstanding any other law, a qualified taxpayer
28 may sell any credit allowed under this section that is attributable
29 to an independent film, as defined in paragraph (6) of subdivision
30 (b), to an unrelated party.

31 (2) The qualified taxpayer shall report to the Franchise Tax
32 Board prior to the sale of the credit, in the form and manner
33 specified by the Franchise Tax Board, all required information
34 regarding the purchase and sale of the credit, including the social
35 security or other taxpayer identification number of the unrelated
36 party to whom the credit has been sold, the face amount of the
37 credit sold, and the amount of consideration received by the
38 qualified taxpayer for the sale of the credit.

39 (3) In the case where the credit allowed under this section
40 exceeds the “net tax,” the excess credit may be carried over to

1 reduce the “net tax” in the following taxable year, and succeeding
2 five taxable years, if necessary, until the credit has been exhausted.

3 (4) A credit shall not be sold pursuant to this subdivision to
4 more than one taxpayer, nor may the credit be resold by the
5 unrelated party to another taxpayer or other party.

6 (5) A party that has acquired tax credits under this section shall
7 be subject to the requirements of this section.

8 (6) In no event may a qualified taxpayer assign or sell any tax
9 credit to the extent the tax credit allowed by this section is claimed
10 on any tax return of the qualified taxpayer.

11 (7) In the event that both the taxpayer originally allocated a
12 credit under this section by the California Film Commission and
13 a taxpayer to whom the credit has been sold both claim the same
14 amount of credit on their tax returns, the Franchise Tax Board may
15 disallow the credit of either taxpayer, so long as the statute of
16 limitations upon assessment remains open.

17 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code does not apply to
19 any standard, criterion, procedure, determination, rule, notice, or
20 guideline established or issued by the Franchise Tax Board
21 pursuant to this subdivision.

22 (9) Subdivision (g) of Section 17039 shall not apply to any
23 credit sold pursuant to this subdivision.

24 (10) For purposes of this subdivision, the unrelated party or
25 parties that purchase a credit pursuant to this subdivision shall be
26 treated as a qualified taxpayer pursuant to paragraph (1) of
27 subdivision (a).

28 (d) No credit shall be allowed pursuant to this section unless
29 the qualified taxpayer provides the following to the California
30 Film Commission:

31 (1) Identification of each qualified individual.

32 (2) The specific start and end dates of production.

33 (3) The total wages paid.

34 (4) The amount of qualified wages paid to each qualified
35 individual.

36 (5) The copyright registration number, as reflected on the
37 certificate of registration issued under the authority of Section 410
38 of Title 17 of the United States Code, relating to registration of
39 claim and issuance of certificate. The registration number shall be
40 provided on the return claiming the credit.

1 (6) The total amounts paid or incurred to purchase or lease
2 tangible personal property used in the production of a qualified
3 motion picture.

4 (7) Information to substantiate its qualified expenditures.

5 (8) Information required by the California Film Commission
6 under regulations promulgated pursuant to subdivision (g)
7 necessary to verify the amount of credit claimed.

8 (e) The California Film Commission may prescribe rules and
9 regulations to carry out the purposes of this section including any
10 rules and regulations necessary to establish procedures, processes,
11 requirements, and rules identified in or required to implement this
12 section. The regulations shall include provisions to set aside a
13 percentage of annual credit allocations for independent films.

14 (f) If the qualified taxpayer fails to provide the copyright
15 registration number as required in paragraph (5) of subdivision
16 (d), the credit shall be disallowed and assessed and collected under
17 Section 19051 until the procedures are satisfied.

18 (g) For purposes of this section, the California Film Commission
19 shall do the following:

20 (1) On or after July 1, 2009, and before July 1, ~~2017~~, 2022,
21 allocate tax credits to applicants.

22 (A) Establish a procedure for applicants to file with the
23 California Film Commission a written application, on a form jointly
24 prescribed by the California Film Commission and the Franchise
25 Tax Board for the allocation of the tax credit. The application shall
26 include, but not be limited to, the following information:

27 (i) The budget for the motion picture production.

28 (ii) The number of production days.

29 (iii) A financing plan for the production.

30 (iv) The diversity of the workforce employed by the applicant,
31 including, but not limited to, the ethnic and racial makeup of the
32 individuals employed by the applicant during the production of
33 the qualified motion picture, to the extent possible.

34 (v) All members of a combined reporting group, if known at
35 the time of the application.

36 (vi) Financial information, if available, including, but not limited
37 to, the most recently produced balance sheets, annual statements
38 of profits and losses, audited or unaudited financial statements,
39 summary budget projections or results, or the functional equivalent
40 of these documents of a partnership or owner of a single member

1 limited liability company that is disregarded pursuant to Section
2 23038. The information provided pursuant to this clause shall be
3 confidential and shall not be subject to public disclosure.

4 (vii) The names of all partners in a partnership not publicly
5 traded or the names of all members of a limited liability company
6 classified as a partnership not publicly traded for California income
7 tax purposes that have a financial interest in the applicant's
8 qualified motion picture. The information provided pursuant to
9 this clause shall be confidential and shall not be subject to public
10 disclosure.

11 (viii) Detailed narratives, for use only by the Legislative
12 Analyst's Office in conducting a study of the effectiveness of this
13 credit, that describe the extent to which the credit is expected to
14 influence or affect filming and other business location decisions,
15 hiring decisions, salary decisions, and any other financial matters
16 of the applicant.

17 (ix) Any other information deemed relevant by the California
18 Film Commission or the Franchise Tax Board.

19 (B) Establish criteria, consistent with the requirements of this
20 section, for allocating tax credits.

21 (C) Determine and designate applicants who meet the
22 requirements of this section.

23 (D) Process and approve, or reject, all applications on a
24 first-come-first-served basis.

25 (E) Subject to the annual cap established as provided in
26 subdivision (i), allocate an aggregate amount of credits under this
27 section and Section 23685, and allocate any carryover of
28 unallocated credits from prior years.

29 (2) Certify tax credits allocated to qualified taxpayers.

30 (A) Establish a verification procedure for the amount of qualified
31 expenditures paid or incurred by the applicant, including, but not
32 limited to, updates to the information in subparagraph (A) of
33 paragraph (1) of subdivision (g).

34 (B) Establish audit requirements that must be satisfied before
35 a credit certificate may be issued by the California Film
36 Commission.

37 (C) (i) Establish a procedure for a qualified taxpayer to report
38 to the California Film Commission, prior to the issuance of a credit
39 certificate, the following information:

1 (I) If readily available, a list of the states, provinces, or other
2 jurisdictions in which any member of the applicant's combined
3 reporting group in the same business unit as the qualified taxpayer
4 that, in the preceding calendar year, has produced a qualified
5 motion picture intended for release in the United States market.
6 For purposes of this clause, "qualified motion picture" shall not
7 include any episodes of a television series that were complete or
8 in production prior to July 1, 2009.

9 (II) Whether a qualified motion picture described in subclause
10 (I) was awarded any financial incentive by the state, province, or
11 other jurisdiction that was predicated on the performance of
12 primary principal photography or postproduction in that location.

13 (ii) The California Film Commission may provide that the report
14 required by this subparagraph be filed in a single report provided
15 on a calendar year basis for those qualified taxpayers that receive
16 multiple credit certificates in a calendar year.

17 (D) Issue a credit certificate to a qualified taxpayer upon
18 completion of the qualified motion picture reflecting the credit
19 amount allocated after qualified expenditures have been verified
20 under this section. The amount of credit shown in the credit
21 certificate shall not exceed the amount of credit allocated to that
22 qualified taxpayer pursuant to this section.

23 (3) Obtain, when possible, the following information from
24 applicants that do not receive an allocation of credit:

25 (A) Whether the qualified motion picture that was the subject
26 of the application was completed.

27 (B) If completed, in which state or foreign jurisdiction was the
28 primary principal photography completed.

29 (C) Whether the applicant received any financial incentives
30 from the state or foreign jurisdiction to make the qualified motion
31 picture in that location.

32 (4) Provide the Legislative Analyst's Office, upon request, any
33 or all application materials or any other materials received from,
34 or submitted by, the applicants, in electronic format when available,
35 including, but not limited to, information provided pursuant to
36 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

37 (5) The information provided to the California Film Commission
38 pursuant to this section shall constitute confidential tax information
39 for purposes of Article 2 (commencing with Section 19542) of
40 Chapter 7 of Part 10.2.

(h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

(2) (A) Notwithstanding paragraph (5) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:

(i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.

(ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.

(B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.

(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 23685 shall be an amount equal to the sum of all of the following:

(A) One hundred million dollars (\$100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the ~~2016–17~~ 2014–15 fiscal year.

(B) One hundred fifty million dollars (\$150,000,000) in credits for the 2015–16 fiscal year.

(C) Two hundred fifty million dollars (\$250,000,000) in credits for the 2016–17 fiscal year and each fiscal year thereafter, through and including the 2021–22 fiscal year.

~~(B)~~

(D) The unused allocation credit amount, if any, for the preceding fiscal year.

1 ~~(C)~~

2 (E) The amount of previously allocated credits not certified.

3 (2) If the amount of credits applied for in any particular fiscal
4 year exceeds the aggregate amount of tax credits authorized to be
5 allocated under this section, such excess shall be treated as having
6 been applied for on the first day of the subsequent fiscal year.
7 However, credits may not be allocated from a fiscal year other
8 than the fiscal year in which the credit was originally applied for
9 or the immediately succeeding fiscal year.

10 (3) Notwithstanding the foregoing, the California Film
11 Commission shall set aside up to ten million dollars (\$10,000,000)
12 of tax credits each fiscal year for independent films allocated in
13 accordance with rules and regulations developed pursuant to
14 subdivision (e).

15 (4) Any act that reduces the amount that may be allocated
16 pursuant to paragraph (1) constitutes a change in state taxes for
17 the purpose of increasing revenues within the meaning of Section
18 3 of Article XIII A of the California Constitution and may be passed
19 by not less than two-thirds of all Members elected to each of the
20 two houses of the Legislature.

21 (j) The California Film Commission shall have the authority to
22 allocate tax credits in accordance with this section and in
23 accordance with any regulations prescribed pursuant to subdivision
24 (e) upon adoption.

25 *SEC. 2. Section 23685 of the Revenue and Taxation Code is*
26 *amended to read:*

27 23685. (a) (1) For taxable years beginning on or after January
28 1, 2011, there shall be allowed to a qualified taxpayer a credit
29 against the "tax," as defined in Section 23036, in an amount equal
30 to the applicable percentage, as specified in paragraph (4), of the
31 qualified expenditures for the production of a qualified motion
32 picture in California.

33 (2) The credit shall be allowed for the taxable year in which the
34 California Film Commission issues the credit certificate pursuant
35 to subdivision (g) for the qualified motion picture, and shall be for
36 the applicable percentage of all qualified expenditures paid or
37 incurred by the qualified taxpayer in all taxable years for that
38 qualified motion picture.

39 (3) The amount of the credit allowed to a qualified taxpayer
40 shall be limited to the amount specified in the credit certificate

1 issued to the qualified taxpayer by the California Film Commission
2 pursuant to subdivision (g).

3 (4) For purposes of paragraphs (1) and (2), the applicable
4 percentage shall be:

5 (A) Twenty percent of the qualified expenditures attributable
6 to the production of a qualified motion picture in California.

7 (B) Twenty-five percent of the qualified expenditures
8 attributable to the production of a qualified motion picture in
9 California where the qualified motion picture is a television series
10 that relocated to California or an independent film.

11 (b) For purposes of this section:

12 (1) “Ancillary product” means any article for sale to the public
13 that contains a portion of, or any element of, the qualified motion
14 picture.

15 (2) “Budget” means an estimate of all expenses paid or incurred
16 during the production period of a qualified motion picture. It shall
17 be the same budget used by the qualified taxpayer and production
18 company for all qualified motion picture purposes.

19 (3) “Clip use” means a use of any portion of a motion picture,
20 other than the qualified motion picture, used in the qualified motion
21 picture.

22 (4) “Credit certificate” means the certificate issued by the
23 California Film Commission pursuant to subparagraph (C) of
24 paragraph (2) of subdivision (g).

25 (5) (A) “Employee fringe benefits” means the amount allowable
26 as a deduction under this part to the qualified taxpayer involved
27 in the production of the qualified motion picture, exclusive of any
28 amounts contributed by employees, for any year during the
29 production period with respect to any of the following:

30 (i) Employer contributions under any pension, profit-sharing,
31 annuity, or similar plan.

32 (ii) Employer-provided coverage under any accident or health
33 plan for employees.

34 (iii) The employer’s cost of life or disability insurance provided
35 to employees.

36 (B) Any amount treated as wages under clause (i) of
37 subparagraph (A) of paragraph (18) shall not be taken into account
38 under this paragraph.

39 (6) “Independent film” means a motion picture with a minimum
40 budget of one million dollars (\$1,000,000) and a maximum budget

1 of ten million dollars (\$10,000,000) that is produced by a company
2 that is not publicly traded and publicly traded companies do not
3 own, directly or indirectly, more than 25 percent of the producing
4 company.

5 (7) “Licensing” means any grant of rights to distribute the
6 qualified motion picture, in whole or in part.

7 (8) “New use” means any use of a motion picture in a medium
8 other than the medium for which it was initially created.

9 (9) (A) “Postproduction” means the final activities in a qualified
10 motion picture’s production, including editing, foley recording,
11 automatic dialogue replacement, sound editing, scoring and music
12 editing, beginning and end credits, negative cutting, negative
13 processing and duplication, the addition of sound and visual effects,
14 soundmixing, film-to-tape transfers, encoding, and color correction.

15 (B) “Postproduction” does not include the manufacture or
16 shipping of release prints.

17 (10) “Preproduction” means the process of preparation for actual
18 physical production which begins after a qualified motion picture
19 has received a firm agreement of financial commitment, or is
20 greenlit, with, for example, the establishment of a dedicated
21 production office, the hiring of key crew members, and includes,
22 but is not limited to, activities that include location scouting and
23 execution of contracts with vendors of equipment and stage space.

24 (11) “Principal photography” means the phase of production
25 during which the motion picture is actually shot, as distinguished
26 from preproduction and postproduction.

27 (12) “Production period” means the period beginning with
28 preproduction and ending upon completion of postproduction.

29 (13) “Qualified entity” means a personal service corporation as
30 defined in Section 269A(b)(1) of the Internal Revenue Code, a
31 payroll services corporation, or any entity receiving qualified wages
32 with respect to services performed by a qualified individual.

33 (14) (A) “Qualified individual” means any individual who
34 performs services during the production period in an activity related
35 to the production of a qualified motion picture.

36 (B) “Qualified individual” shall not include either of the
37 following:

38 (i) Any individual related to the qualified taxpayer as described
39 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
40 Revenue Code.

1 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.

3 (15) (A) “Qualified motion picture” means a motion picture
4 that is produced for distribution to the general public, regardless
5 of medium that is one of the following:

6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000) and a maximum production budget of
8 seventy-five million dollars (\$75,000,000).

9 (ii) A movie of the week or miniseries with a minimum
10 production budget of five hundred thousand dollars (\$500,000).

11 (iii) A new television series produced in California with a
12 minimum production budget of one million dollars (\$1,000,000)
13 licensed for original distribution on basic cable.

14 (iv) An independent film.

15 (v) A television series that relocated to California.

16 (B) To qualify as a “qualified motion picture,” all of the
17 following conditions shall be satisfied:

18 (i) At least 75 percent of the production days occur wholly in
19 California or 75 percent of the production budget is incurred for
20 payment for services performed within the state and the purchase
21 or rental of property used within the state.

22 (ii) Production of the qualified motion picture is completed
23 within 30 months from the date on which the qualified taxpayer’s
24 application is approved by the California Film Commission. For
25 purposes of this section, a qualified motion picture is “completed”
26 when the process of postproduction has been finished.

27 (iii) The copyright for the motion picture is registered with the
28 United States Copyright Office pursuant to Title 17 of the United
29 States Code.

30 (iv) Principal photography of the qualified motion picture
31 commences after the date on which the application is approved by
32 the California Film Commission, but no later than 180 days after
33 the date of that approval.

34 (C) For the purposes of subparagraph (A), in computing the
35 total wages paid or incurred for the production of a qualified
36 motion picture, all amounts paid or incurred by all persons or
37 entities that share in the costs of the qualified motion picture shall
38 be aggregated.

39 (D) “Qualified motion picture” shall not include commercial
40 advertising, music videos, a motion picture produced for private

1 noncommercial use, such as weddings, graduations, or as part of
2 an educational course and made by students, a news program,
3 current events or public events program, talk show, game show,
4 sporting event or activity, awards show, telethon or other
5 production that solicits funds, reality television program, clip-based
6 programming if more than 50 percent of the content is comprised
7 of licensed footage, documentaries, variety programs, daytime
8 dramas, strip shows, one-half hour (air time) episodic television
9 shows, or any production that falls within the recordkeeping
10 requirements of Section 2257 of Title 18 of the United States Code.

11 (16) “Qualified expenditures” means amounts paid or incurred
12 to purchase or lease tangible personal property used within this
13 state in the production of a qualified motion picture and payments,
14 including qualified wages, for services performed within this state
15 in the production of a qualified motion picture.

16 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
17 or incurred qualified expenditures and has been issued a credit
18 certificate by the California Film Commission pursuant to
19 subdivision (g).

20 (B) (i) In the case of any pass-thru entity, the determination of
21 whether a taxpayer is a qualified taxpayer under this section shall
22 be made at the entity level and any credit under this section is not
23 allowed to the pass-thru entity, but shall be passed through to the
24 partners or shareholders in accordance with applicable provisions
25 of Part 10 (commencing with Section 17001) or Part 11
26 (commencing with Section 23001). For purposes of this paragraph,
27 “pass-thru entity” means any entity taxed as a partnership or “S”
28 corporation.

29 (ii) In the case of an “S” corporation, the credit allowed under
30 this section shall not be used by an “S” corporation as a credit
31 against a tax imposed under Chapter 4.5 (commencing with Section
32 23800) of Part 11 of Division 2.

33 (18) (A) “Qualified wages” means all of the following:

34 (i) Any wages subject to withholding under Division 6
35 (commencing with Section 13000) of the Unemployment Insurance
36 Code that were paid or incurred by any taxpayer involved in the
37 production of a qualified motion picture with respect to a qualified
38 individual for services performed on the qualified motion picture
39 production within this state.

1 (ii) The portion of any employee fringe benefits paid or incurred
2 by any taxpayer involved in the production of the qualified motion
3 picture that are properly allocable to qualified wage amounts
4 described in clause (i).

5 (iii) Any payments made to a qualified entity for services
6 performed in this state by qualified individuals within the meaning
7 of paragraph (14).

8 (iv) Remuneration paid to an independent contractor who is a
9 qualified individual for services performed within this state by that
10 qualified individual.

11 (B) “Qualified wages” shall not include any of the following:

12 (i) Expenses, including wages, related to new use, reuse, clip
13 use, licensing, secondary markets, or residual compensation, or
14 the creation of any ancillary product, including, but not limited to,
15 a soundtrack album, toy, game, trailer, or teaser.

16 (ii) Expenses, including wages, paid or incurred with respect to
17 acquisition, development, turnaround, or any rights thereto.

18 (iii) Expenses, including wages, related to financing, overhead,
19 marketing, promotion, or distribution of a qualified motion picture.

20 (iv) Expenses, including wages, paid per person per qualified
21 motion picture for writers, directors, music directors, music
22 composers, music supervisors, producers, and performers, other
23 than background actors with no scripted lines.

24 (19) “Residual compensation” means supplemental
25 compensation paid at the time that a motion picture is exhibited
26 through new use, reuse, clip use, or in secondary markets, as
27 distinguished from payments made during production.

28 (20) “Reuse” means any use of a qualified motion picture in the
29 same medium for which it was created, following the initial use
30 in that medium.

31 (21) “Secondary markets” means media in which a qualified
32 motion picture is exhibited following the initial media in which it
33 is exhibited.

34 (22) “Television series that relocated to California” means a
35 television series, without regard to episode length or initial media
36 exhibition, that filmed all of its prior season or seasons outside of
37 California and for which the taxpayer certifies that the credit
38 provided pursuant to this section is the primary reason for
39 relocating to California.

1 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
2 the case where the credit allowed by this section exceeds the
3 taxpayer's tax liability computed under this part, a qualified
4 taxpayer may elect to assign any portion of the credit allowed
5 under this section to one or more affiliated corporations for each
6 taxable year in which the credit is allowed. For purposes of this
7 subdivision, "affiliated corporation" has the meaning provided in
8 subdivision (b) of Section 25110, as that section was amended by
9 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
10 year in which the credit is allowed, except that "100 percent" is
11 substituted for "more than 50 percent" wherever it appears in the
12 section, and "voting common stock" is substituted for "voting
13 stock" wherever it appears in the section.

14 (2) The election provided in paragraph (1):

15 (A) May be based on any method selected by the qualified
16 taxpayer that originally receives the credit.

17 (B) Shall be irrevocable for the taxable year the credit is allowed,
18 once made.

19 (C) May be changed for any subsequent taxable year if the
20 election to make the assignment is expressly shown on each of the
21 returns of the qualified taxpayer and the qualified taxpayer's
22 affiliated corporations that assign and receive the credits.

23 (D) Shall be reported to the Franchise Tax Board, in the form
24 and manner specified by the Franchise Tax Board, along with all
25 required information regarding the assignment of the credit,
26 including the corporation number, the federal employer
27 identification number, or other taxpayer identification number of
28 the assignee, and the amount of the credit assigned.

29 (3) (A) Notwithstanding any other law, a qualified taxpayer
30 may sell any credit allowed under this section that is attributable
31 to an independent film, as defined in paragraph (6) of subdivision
32 (b), to an unrelated party.

33 (B) The qualified taxpayer shall report to the Franchise Tax
34 Board prior to the sale of the credit, in the form and manner
35 specified by the Franchise Tax Board, all required information
36 regarding the purchase and sale of the credit, including the social
37 security or other taxpayer identification number of the unrelated
38 party to whom the credit has been sold, the face amount of the
39 credit sold, and the amount of consideration received by the
40 qualified taxpayer for the sale of the credit.

(4) In the case where the credit allowed under this section exceeds the “tax,” the excess credit may be carried over to reduce the “tax” in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.

(5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

(6) A party that has been assigned or acquired tax credits under this paragraph shall be subject to the requirements of this section.

(7) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.

(8) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(10) Subdivision (i) of Section 23036 shall not apply to any credit sold pursuant to this subdivision.

(11) For purposes of this subdivision:

(A) An affiliated corporation or corporations that are assigned a credit pursuant to paragraph (1) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(B) The unrelated party or parties that purchase a credit pursuant to paragraph (3) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(1) Identification of each qualified individual.

(2) The specific start and end dates of production.

(3) The total wages paid.

(4) The amount of qualified wages paid to each qualified individual.

1 (5) The copyright registration number, as reflected on the
2 certificate of registration issued under the authority of Section 410
3 of Title 17 of the United States Code, relating to registration of
4 claim and issuance of certificate. The registration number shall be
5 provided on the return claiming the credit.

6 (6) The total amounts paid or incurred to purchase or lease
7 tangible personal property used in the production of a qualified
8 motion picture.

9 (7) Information to substantiate its qualified expenditures.

10 (8) Information required by the California Film Commission
11 under regulations promulgated pursuant to subdivision (g)
12 necessary to verify the amount of credit claimed.

13 (e) The California Film Commission may prescribe rules and
14 regulations to carry out the purposes of this section including any
15 rules and regulations necessary to establish procedures, processes,
16 requirements, and rules identified in or required to implement this
17 section. The regulations shall include provisions to set aside a
18 percentage of annual credit allocations for independent films.

19 (f) If the qualified taxpayer fails to provide the copyright
20 registration number as required in paragraph (5) of subdivision
21 (d), the credit shall be disallowed and assessed and collected under
22 Section 19051 until the procedures are satisfied.

23 (g) For purposes of this section, the California Film Commission
24 shall do the following:

25 (1) On or after July 1, 2009, and before July 1, ~~2017~~, 2022,
26 allocate tax credits to applicants.

27 (A) Establish a procedure for applicants to file with the
28 California Film Commission a written application, on a form jointly
29 prescribed by the California Film Commission and the Franchise
30 Tax Board for the allocation of the tax credit. The application shall
31 include, but not be limited to, the following information:

32 (i) The budget for the motion picture production.

33 (ii) The number of production days.

34 (iii) A financing plan for the production.

35 (iv) The diversity of the workforce employed by the applicant,
36 including, but not limited to, the ethnic and racial makeup of the
37 individuals employed by the applicant during the production of
38 the qualified motion picture, to the extent possible.

39 (v) All members of a combined reporting group, if known at
40 the time of the application.

(vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(viii) Detailed narratives, for use only by the Legislative Analyst's Office in conducting a study of the effectiveness of this credit, that describe the extent to which the credit is expected to influence or affect filming and other business location decisions, hiring decisions, salary decisions, and any other financial matters of the applicant.

(ix) Any other information deemed relevant by the California Film Commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.

(C) Determine and designate applicants who meet the requirements of this section.

(D) Process and approve, or reject, all applications on a first-come-first-served basis.

(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 17053.85, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (1) of subdivision (g).

1 (B) Establish audit requirements that must be satisfied before
2 a credit certificate may be issued by the California Film
3 Commission.

4 (C) (i) Establish a procedure for a qualified taxpayer to report
5 to the California Film Commission, prior to the issuance of a credit
6 certificate, the following information:

7 (I) If readily available, a list of the states, provinces, or other
8 jurisdictions in which any member of the applicant's combined
9 reporting group in the same business unit as the qualified taxpayer
10 that, in the preceding calendar year, has produced a qualified
11 motion picture intended for release in the United States market.
12 For purposes of this clause, "qualified motion picture" shall not
13 include any episodes of a television series that were complete or
14 in production prior to July 1, 2009.

15 (II) Whether a qualified motion picture described in subclause
16 (I) was awarded any financial incentive by the state, province, or
17 other jurisdiction that was predicated on the performance of
18 primary principal photography or postproduction in that location.

19 (ii) The California Film Commission may provide that the report
20 required by this subparagraph be filed in a single report provided
21 on a calendar year basis for those qualified taxpayers that receive
22 multiple credit certificates in a calendar year.

23 (D) Issue a credit certificate to a qualified taxpayer upon
24 completion of the qualified motion picture reflecting the credit
25 amount allocated after qualified expenditures have been verified
26 under this section. The amount of credit shown in the credit
27 certificate shall not exceed the amount of credit allocated to that
28 qualified taxpayer pursuant to this section.

29 (3) Obtain, when possible, the following information from
30 applicants that do not receive an allocation of credit:

31 (A) Whether the qualified motion picture that was the subject
32 of the application was completed.

33 (B) If completed, in which state or foreign jurisdiction was the
34 primary principal photography completed.

35 (C) Whether the applicant received any financial incentives
36 from the state or foreign jurisdiction to make the qualified motion
37 picture in that location.

38 (4) Provide the Legislative Analyst's Office, upon request, any
39 or all application materials or any other materials received from,
40 or submitted by, the applicants, in electronic format when available,

1 including, but not limited to, information provided pursuant to
2 clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).

3 (5) The information provided to the California Film Commission
4 pursuant to this section shall constitute confidential tax information
5 for purposes of Article 2 (commencing with Section 19542) of
6 Chapter 7 of Part 10.2.

7 (h) (1) The California Film Commission shall annually provide
8 the Legislative Analyst's Office, the Franchise Tax Board, and the
9 board with a list of qualified taxpayers and the tax credit amounts
10 allocated to each qualified taxpayer by the California Film
11 Commission. The list shall include the names and taxpayer
12 identification numbers, including taxpayer identification numbers
13 of each partner or shareholder, as applicable, of the qualified
14 taxpayer.

15 (2) (A) Notwithstanding paragraph (5) of subdivision (g), the
16 California Film Commission shall annually post on its Internet
17 Web site and make available for public release the following:

18 (i) A table which includes all of the following information: a
19 list of qualified taxpayers and the tax credit amounts allocated to
20 each qualified taxpayer by the California Film Commission, the
21 number of production days in California the qualified taxpayer
22 represented in its application would occur, the number of California
23 jobs that the qualified taxpayer represented in its application would
24 be directly created by the production, and the total amount of
25 qualified expenditures expected to be spent by the production.

26 (ii) A narrative staff summary describing the production of the
27 qualified taxpayer as well as background information regarding
28 the qualified taxpayer contained in the qualified taxpayer's
29 application for the credit.

30 (B) Nothing in this subdivision shall be construed to make the
31 information submitted by an applicant for a tax credit under this
32 section a public record.

33 (i) (1) The aggregate amount of credits that may be allocated
34 in any fiscal year pursuant to this section and Section 17053.85
35 shall be an amount equal to the sum of all of the following:

36 (A) One hundred million dollars (\$100,000,000) in credits for
37 the 2009–10 fiscal year and each fiscal year thereafter, through
38 and including the ~~2016–17~~ 2014–15 fiscal year.

39 (B) *One hundred fifty million dollars (\$150,000,000) in credits*
40 *for the 2015–16 fiscal year.*

1 (C) Two hundred fifty million dollars (\$250,000,000) in credits
2 for the 2016–17 fiscal year and each fiscal year thereafter, through
3 and including the 2021–22 fiscal year.

4 ~~(B)~~

5 (D) The unused allocation credit amount, if any, for the
6 preceding fiscal year.

7 ~~(C)~~

8 (E) The amount of previously allocated credits not certified.

9 (2) If the amount of credits applied for in any particular fiscal
10 year exceeds the aggregate amount of tax credits authorized to be
11 allocated under this section, such excess shall be treated as having
12 been applied for on the first day of the subsequent fiscal year.
13 However, credits may not be allocated from a fiscal year other
14 than the fiscal year in which the credit was originally applied for
15 or the immediately succeeding fiscal year.

16 (3) Notwithstanding the foregoing, the California Film
17 Commission shall set aside up to ten million dollars (\$10,000,000)
18 of tax credits each fiscal year for independent films allocated in
19 accordance with rules and regulations developed pursuant to
20 subdivision (e).

21 (4) Any act that reduces the amount that may be allocated
22 pursuant to paragraph (1) constitutes a change in state taxes for
23 the purpose of increasing revenues within the meaning of Section
24 3 of Article XIII A of the California Constitution and may be passed
25 by not less than two-thirds of all Members elected to each of the
26 two houses of the Legislature.

27 (j) The California Film Commission shall have the authority to
28 allocate tax credits in accordance with this section and in
29 accordance with any regulations prescribed pursuant to subdivision
30 (e) upon adoption.

31 SEC. 3. *This act provides for a tax levy within the meaning of*
32 *Article IV of the Constitution and shall go into immediate effect.*

33 ~~SECTION 1. It is the intent of the Legislature to enact~~
34 ~~legislation that would be related to the tax credits authorized under~~
35 ~~the Personal Income Tax Credit and the Corporation Tax Law for~~
36 ~~qualified motion pictures.~~